IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.5754 OF 1999

1. P. Sivalingam
2. S. Paulraj
3. S. Sasikala .. Petitioners

-VS-

1. The Director of Elementary Education,
College Road, Chennai 6.

2. The District Elementary Education
Officer, Villupuram,
Villupuram District.

3. The Additional Assistant Education
Officer, Chinna Salem,
Villupuram District.

4. The Manager-cum-Correspondent,
Azad Middle School,
Mettupalayam,
Vadakanandal Post,
Kallakurichi Taluk,
Villupuram District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.S. Alaguraja
for Mr.S. Ponnarasi

For Respondents 1 -3: Mrs. Thenmozhi Shivaperumal
A.G.P.,

For Respondent-4 : Mr. Joseph Thatheus Jerome

:J U D G M E N T

One Maria Baby, the deceased wife of Petitioner No.1 and mother of Petitioner Nos.2 & 3, was working as Assistant Teacher under Azad Middle School, which is stated to be an aided school. The present writ petition has been filed to issue a writ of certiorarified mandamus calling for the entire records pertaining to Na.Ka.No.6563 EG3/98 dated 6.10.98 and to direct the respondents 1 to 3 to disburse the deathcum-service benefits of Tmt. Maria Baby with retrospective effect from 18.4.1986.

2. In the writ petition itself several averments have been made which relate to petitioner No.1, who himself was working as a teacher in the very same school. The specific averments relating to petitioner No.1 in his capacity as teacher or Headmaster are not required to be considered for the purpose of deciding the present writ petition, wherein the prayer is confined to the payment of death and service benefits of Maria Baby,the wife of petitioner No.1.

3. So far as relevant for the aforesaid purpose, the averments in the writ petition are to the effect that the deceased had joined the school in the year 1971. Her husband, the present petitioner No.1 was working as a Headmaster. At that time, one Mr.K.A. Khudus was Manager/Correspondent. It is alleged that in course of surprise visit made by the third respondent on 28.10.1981, it was found that the said K.A. Khudus was receiving salary as if he was a teacher even though he was not taking classes. The petitioner No.1 in his capacity as Headmaster had to submit explanation dated 16.12.1981. It is stated that being provoked by the aforesaid explanation, the Manager/ Correspondent being vengeful, started harassing petitioner No.1 and such controversy led to reversion of the petitioner No.1. It is further stated that such controversy also provoked the fourth respondent to victimise the wife of the petitioner No.1 and she was physically prevented from entering to the school on 18.4.1986. It is further stated that a representation was immediately made by petitioner No.1 and his wife to the Chief Educational Officer on 19.4.1986, but no action was taken. Subsequently, petitioner No.1 was also similarly prevented and the representation made by petitioner No.1 was also not considered. It is claimed that petitioner No.1 and his wife were thus prevented by oral termination. At that stage, W.P.No.3440 of 1987 was filed by petitioner No.1 praying for a direction to the second respondent and others to take suitable action and issue necessary direction to permit petitioner No.1 and his wife to join duty in the school. Such writ petition was disposed of by the High Court on 2.4.1987 with the following observation :-

 . . . The 2nd respondent will consider the grievance of the petitioners for which the above prayer is made before me and grant such necessary redressal as is possible. Subject to the above direction the writ petition is dismissed.

4. Pursuant to the aforesaid direction, the second respondent passed the following order :-

 . . . The Azad Middle School (Aided) Mettupalayam, is a minority Institution and it is not governed by the Tamilnadu Recognised Private Schools

(Regulations) Act and the Rules framed thereunder., and the Educational Authorities are precluded to interfere in the administrative matters of the Institutions which enjoys minority Status.

So the 2nd Respondent viz. the District Educational Officer, Vridhachalam declines to interfere in the matter. . . .

5. It is further stated in the affidavit that subsequently petitioner No.1 came to learn that a publication had been made in Dinamalar Newspaper indicating that his wife had been terminated from service with effect from 1.6.1987 on the ground that she had not attended the enquiry. It is specifically averred that the wife of the petitioner No.1 was not served with charge memo nor notice. It is further stated that various representations had been made including dated 18.7.1988 addressed to the Chief Minister of Tamil Nadu and a reply was received to the effect that the school being a minority institution, the authorities could not interfere with the order passed by the school. At that stage, petitioner No.1 and his wife had sent representations dated 1.6.1990 and 21.7.1990 to the third respondent asking for Service Registers to work in some other place, but the third respondent refused to handover the Service Registers on the ground that W.P.Nos.556 1 of 1984 and 3189 of 1986 were pending. It is also alleged that the petitioner was told that on withdrawal of those writ petitions, compromise could be effected and accordingly those writ petitions were withdrawn. It is further stated that a representation was made by the Tamil Nadu Primary School Teachers Federation. On the basis of such representation, some enquiry was conducted by the third respondent, but no order had been communicated. It is further stated that several other matters were agitated before the authorities or before the High Court and while the matter stood thus, Maria Baby died. It is further stated that thereafter the present petitioners had made various representations to the respondents 1 to 3 as well as the Chief Minister of Tamilnadu highlighting the illegal termination of the services of Maria Baby and claiming damages on account of the death of Maria Baby. The order passed by the second respondent dated 29.11.1996 in Na.Ka.No.14587/A3/94 is to the following effect :-

. . . One S. Sasikala has given a representation to give the Service Registers of her father and mother in order to get family pension. The Asst. Education Officer is hereby directed to act so as to the applicant get the SRs of the above said Teachers within 24 hours from the date of receipt of this letter and also directed to inform this office about proceedings in this regard.

6. It is claimed that inspite of such direction, the third respondent did not pass any order and petitioner No.3, the daughter of deceased Maria Baby, had made further representation dated 3.12.1997 to the respondents 1 to 3 as well as the Chief Minister. At that stage, petitioner NO.3 filed W.P.No.1223 of 1998, which was disposed of by the High Court with a direction to the first respondent to consider and pass orders on the representation dated 3.12.1997. Since no action was taken, Contempt Application No.463 of 1998 was moved before the High Court. During pendency of such proceedings, impugned order dated 6.10.1998 has been passed, which is

to the following effect :-

 . . . The following orders are issued with regard to the representation dt.3.12.97 given by S. Sasikala with regard to the termination of her mother and father, subject to the pending cases in (1) W.P.No.16053/93 and (2) W.P.No.8205/94 which are still pending.

1. It is informed that the authorities cannot interfere with the administration of the School where the applicant s mother was working since the said school is minority School. Hence, the termination of the teachers cannot be interfered as per the Proc. of District Education Officer, Virudhachalam vide Na.Ka.No.20527 A5/85 dt. 9.7.87 and Proc. of the Joint Director of School Education, Chennai, vide O.Mu. No.6 413/P.21/89 dt. 20.10.89.

2. It is informed that no action can be taken with regard to the Service benefits, retirement benefits and for the job on compassionate ground until orders are issued after disposal in W.P.16053/93 and W. P.No.8205/94 pending before the High Court of Madras.

3. It is also informed that the claim of the petitioner cannot be entertained because of the pendency of the cases filed by the parent of the petitioner and also informed that the Department of Education is not responsible for claim of Rs.20,000/- as compensation.

4. It is also informed that the Service Registers of the mother and father of the petitioner cannot be handed over because of the pendency of the Writ Petitions filed by her parents before the High Court of Madras.

5. The Provident Fund for the mother of the Petitioner is ordered to be disbursed to the legal heirs by the Addl. Asst. Education Officer, Chinnasalem dated 23.7.97 and on 30.7.97 the father of the Petitioner Mr. Sivalingam has received the same.

The accrued sum on Special Welfare Fund has been deposited in the treasury by the Addl.Asst. Education Officer, Chinnasalem and the said sum will be disbursed after realisation to the heirs with one or two days.

Further it is informed that the claim of the petitioner cannot be entertained since the husband of the deceased mother and father of the petitioner P. Sivalingam is alive. . . .

7. Subsequently, the only benefit which was made available relates to payment of Rs.504/- towards Special Welfare Fund of Ex.Assistant Teacher Maria Baby as per communication dated 23.11.1998.

8. In the aforesaid background, the contention of the petitioners is to the effect that the respondents 1 to 3 have failed to discharge their duties and they have illegally refused to consider the question of illegal termination in respect of Maria Baby on the ground that respondent No.4 was a minority institution. In this context, it is contended

that as a matter of fact the application of respondent No.4

for being considered as a minority institution was still under consideration. It is further submitted that even assuming that 4th respondent's institution was a minority institution, since it was receiving aid, the Rules made by the Government are applicable, particularly the rules relating to service condition of the teachers. Accordingly, prayer has been made to quash the impugned order dated 6.10.1998 and also to implement the order dated 25.11.1996 in Na.Ka.No.14587/A3/94.

8. A counter affidavit has been filed on behalf of fourth respondent. Such affidavit has been sworn to by one Abdul Kareem, son of late K.A. Khudus. Deponent is the present Correspondent of the fourth respondent school. The relevant portions of the counter affidavit are to the following effect :-

" (5) So my knowledge the school had after affording sufficient opportunity conducted domestic enquiry against the Ist Writ Petitioner and his wife the mother of the 2nd and 3rd Writ Petitioners and the Charges having been found proved against them, their services were terminated. The said orders were challenged by the Ist Writ Petitioner and the writ petitions having been withdrawn, the termination order stands upheld as on this date. The termination orders to my knowledge was also published in the daily newspaper as the Ist writ Petitioner and the mother of the 2nd Writ Petitioner and 3rd writ petitioner refused to receive the same. All the termination orders were also approved by the Education Department. The service Register are with the Education Department.

(6) I beg to submit that the Writ Petitioners challenge to the termination order in W.P.No.5561/1984, and W.P.No.3189/1996 were withdrawn by them and has become final. I beg to submit that the averments made in para 7 and 8 of the affidavit are denied as not correct.

(6) I beg to submit that WP.No.18117/1992 was dismissed as withdrawn on 27.11.2000. W.P.No.16053/1993 was dismissed by this Hon'ble Court on 3.7.2000 and W.P.No.8205/1994 was disposed of by this Hon' ble Court on 29.9.1999 itself.

(7) Thus it will be manifest that all the averments of the Writ Petitioners have been discountanenced by this Hon'ble Court at every point of time."

10. Apart from the above averments, which are specifically quoted, substance of other averments in the counter affidavit is to the effect that the claim regarding payment of Rs.20 lakhs had never been accepted and it is further stated that no relief had been claimed against 4th respondent and the High Court should not permit the petitioners to indirectly claim any relief against 4th respondent through other respondents.

11. A rejoinder affidavit has been filed on behalf of the petitioners, wherein mainly the averments made relating to filing of other

writ petitions have been clarified and those aspects would be dealt with at the relevant time.

12. Before considering other aspects, one main aspect raised by the petitioners relating to direction of the second respondent to the third respondent to pay Rs.20 lakhs towards compensation and gratuity, etc. needs to be clarified. The contention is based on order dated 2 5.11.1996, relevant portion of which is extracted hereudner in extenso :-

 . . . The Petitioner Selvi S. Sasikala, who is the daughter of P. Sivalingam and Maria Baby who were removed from service from Aided Azaad Middle School, Mettupalyam has stated in her petition as follows :

1. The Service Registers of her father and mother were not handed over.

2. Rs.20,00,000/- is to be disbursed towards the retirement-service benefits, gratuity and other benefits.

3. Family Welfare Fund also not disbursed.

The Asst. Elementary Education Officer of Chinnasalem is directed to disburse the above sum claimed to Selvi S. Sasikala, and inform about the same within three days from the date of receipt of this proceedings.

13. A mere perusal of the aforesaid order makes it clear that there was no specific determination regarding the grievance putforth by the present petitioner No.3. Even though, a cursory look at the order may give an impression as if the entire claim of the petitioner No.3 had been allowed, in the absence of any detailed discussion, it would be unjust as well as hazardous to come to a conclusion that there was a specific direction regarding payment of Rs.20 lakhs. The only inference which can be reasonably drawn is that the Assistant Elementary Educational Officer was directed to look into the matter. Otherwise, there cannot be any justification for the second respondent to direct the third respondent because illegal termination, if any, had been made by fourth respondent and compensation, if any, was to be paid by such fourth respondent and not by the third respondent.

14. Even though no relief can be specifically given to the petitioners on the above score, the other grievance relating to illegal termination of Maria Baby cannot be wished away or characterised as baseless. A perusal of all earlier orders passed by respondents 1 to 3 would clearly indicate that all along such authorities had declined to look into the matter on the ground that 4th respondent school was a minority institution. Respondents 1 to 3 have all along ignored the relevant fact that even assuming that 4th respondent is a minority institution, it was receiving aid from the Government and the teachers of such schools were entitled to protection contemplated under the statutory rules made by the State Government. This position is amply clear in view of several decisions of this Court, particularly the Division Bench decision reported in 2000 WLR 898 (C. MASANAM

v. THE CHIEF EDUCATIONAL OFFICER, MADURAI AND ANOTHER). Apart from the aforesaid Division Bench decision, there are several other decisions of this Court such as, 2000 WLR 300 (K. CHETTIAPPAN v. THE CHIEF EDUCATIONAL OFFICER, MADURAI AND ANOTHER), 1989 (1) LLN 728 (MARIANANDAM v. GOVERNMENT OF TAMIL NADU AND OTHERS) (decided by Justice M. Srinivasan, as His Lordship then was) and 1996 WLR 470 (A. CASMIR & OTHERS v. THE JOINT DIRECTIOR OF SCHOOLS (EDUCATION (HIGHER SECONDARY) & 2 OTHERS) (decided by Justice A.R. Lakshmanan, as His Lordship then was). Views expressed in various decisions of this High Court receive considerable support from the decision reported in 1987 SC 1210 (MRS.Y. THECLAMMA v. UNION OF INDIA).

15. From the aforesaid decisions, it is quite clear that if a disciplinary action is taken against a teacher of a minority institution receiving aid, the provisions contained in Tamil Nadu Recognised Private Schools (Regulation) Act are to be followed.

16. In view of the aforesaid conclusion, in normal course, I would have remanded the matter to the educational authorities to consider afresh the question relating to termination of Maria Baby. However, I desist from doing so and intend to decide the matter finally on account of the reason that the matter had remained pending before different authorities, including the High Court, for more than 15 years and Maria Baby, the alleged victim of illegal termination, herself has expired in the meantime. The petitioners who have been running from pillar to post should not be subjected to further process of harassment which would be the inevitable result if the matter is remanded for consideration at this stage. Adopting such a course would be like shifting the capital from Delhi to Doulatabad, as narrated in Indian History.

17. Before going into the aspect of termination on merit, certain legal and technical hurdles posed by respondent No.4 are to cleared. Relevant portion of the counter affidavit has been extracted, which would indicate as if the claim relating to illegal termination of Maria Baby has already been decided by the appropriate authorities as well as by the High Court. So far as the educational authorities are concerned, it is obvious that the grievance relating to alleged illegal termination of Maria Baby has never been considered by any of the educational authorities on the specious ground that fourth respondent institution was a minority institution and was thus beyond the pale of jurisdiction of the educational authorities.

18. As already indicated, various decisions of this Court clearly indicate otherwise. The decisions taken by the respondents 1 to 3 at different stages were merely on the question of jurisdiction and the merits of the contentions had never been decided. Such decision taken by the authorities, which are more or less administrative in nature, obviously cannot operate as res judicata,. Even otherwise, since various orders passed by the administrative authorities were merely on the basis of jurisdiction, any erroneous decision on the question of jurisdiction, particularly, refusing to entertain the matter, cannot operate as res judicata. This is clear from the decision of the Supreme Court reported in AIR 1971 SC 2355 (MATHURA PRASAD

SARJOO JAISWAL AND OTHERS v. DOSSIBAI N.B. JEE JEE BHOY). The ratio of the aforesaid decision, which was rendered in the context of a question relating to jurisdiction of a court, is applicable with more vigour to the orders passed by the administrative authorities, as in the present case.

19. The objections raised by the respondent No.4 relating to the decision taken by the High Court in the earlier writ petitions is required to be considered more seriously. In the counter affidavit, reference has been made to several writ petitions. It is more appropriate and convenient to refer to various cases individually.

20. Fourth respondent has indicated that the petitioners challenge to the termination in W.P.No.5561 of 1984 and W.P.No.3189 of 1986 were withdrawn and had become final. W.P.No.5561 of 1984 had been filed by the present petitioner No.1 challenging his own reversion vide order dated 24.8.1984. Even though in the present writ petition there has been some reference to said order of reversion as indicated at the threshold, prayer in the writ petition is confined to the benefits available to the deceased Maria Baby. Therefore, withdrawal of W.P.No.5561 of 1984, which had been filed by the petitioner No.1 challenging his own reversion is of no consequence. Similarly, W.P. No.3189 of 1986 was filed by petitioner No.1 seeking for a writ of mandamus directing the respondents therein to fix the time scale and increment relating to petitioner No.1. Withdrawal of such writ petition obviously cannot have any effect on the claim relating to service benefits of deceased Maria Baby.

21. W.P.No.18117 of 1992 had been filed for a direction to the educational authorities to handover the service registers relating to petitioner No.1 and Maria Baby with a view to enable such applicants to seek employment elsewhere. Such writ petition was withdrawn on 27 .1 1.2000. By then, Maria Baby had already expired and obviously so far as she was concerned, the writ petition itself had become meaningless. Therefore, withdrawal of the said writ petition as per order dated 27.11.2000 cannot have any repercussion so far as the present claim is concerned.

22. W.P.No.16053 of 1993 had been filed by the petitioner No.1 as well as Maria Baby seeking for a direction to the respondents to furnish enquiry report based on the inspection report in 1981 and to issue

final orders. Such matter was taken up on 3.7.2000, by which date the second petitioner, namely, Maria Baby was already dead. The said writ petition was disposed of with the following observation :-

 . . . Even at the outset it is stated that pending disposal of the above proceedings, the second petitioner is reported dead. After hearing the learned counsel for the petitioner as well as learned Government Advocate and in the light of the fact the prayer in the Writ Petition is not clear and vague, I am of the view that it is open to the first petitioner to make fresh representation/complaint to any one of the respondents 1 to 3 with regard to

the conduct of the fourth respondent. It is made clear that if any such representation is made the respondents mentioned above are directed to consider the same and pass orders expeditiously after notice to the fourth respondent. With this direction, the writ petition is dismissed.

Obviously the order passed in the said writ petition cannot be held as a bar against the relief now claimed.

23. W.P.No.8205 of 1994 had been filed for issuing a direction to the first respondent to dispose of the appeal filed by the petitioners through the office bearers of Tamil Nadu Primary School Teachers Federation. The said writ petition was disposed of on 29.9.1999 with a direction to the first respondent to dispose of the appeal relating to order of reversion and the newspaper publication regarding termination. As a matter of fact, such appeal was disposed of on 14.6.2000 by holding that the appeal is not maintainable as the institution was a minority institution. It is also not understood as to how such order in the writ petition will stand in the way to the relief now claimed.

24. Apart from the above WPs, which have been referred to by the respondent No.4 in his counter as deciding the right claimed in the writ petition, it appears that there was another W.P.No.3440 of 1987, wherein the prayer of the petitioner No.1 and his wife was to issue a direction to enable the petitioners to join the school. Such writ petition was disposed of with a direction to the authorities to consider and pass orders and thereafter the authorities indicated that they cannot interfere with the affairs of the minority institution. A detailed perusal and analysis of all these orders makes it clear that the right now claimed was never agitated nor decided on merit against the petitioners at any time. The question of applying the principle of res judicata does not arise at all.

25. Now the stage is for deciding the merits of the contentions raised. The basic contention is to the effect that Maria Baby was prevented from resuming her duty as Assistant Teacher without any formal order being passed and without any formal enquiry being held. As a matter of fact, on the very next day, a representation had been made on behalf of Maria Baby to the educational authorities complaining about the action of the respondent No.4 by which she was prevented from joining her duty. In the counter affidavit filed on behalf of respondent No.4, apart from a vague denial, no other specific material has been brought on record. It has been stated that sufficient opportunity had been given in the domestic enquiry and thereafter the services were terminated and such termination orders were published in the newspaper. Unfortunately, however, the respondent No.4 has not produced any copy of the disciplinary proceedings nor produced copy of the so-called termination order. In the absence of any material indicating that the principles of natural justice had been followed, it is difficult to uphold the action of the respondent No.4. It was the duty of the respondent No.4 to produce adequate materials to indicate that before preventing Maria Baby from joining duty with effect from 18.4 .1986, a valid order of termination had been passed. In the absence of any order, I am constrained to hold that there was no justification on the part of the respondent No.4 in preventing Maria

Baby from discharging her duty as Assistant Teacher.

26. Since Maria Baby has expired in the meantime, she cannot be reinstated in service. However, it must be taken that she was in service all along till her death and on that footing, retirement benefits such as payment of gratuity, pension, etc., would become payable by the respondents 1 to 3. So far as the salary for the aforesaid period is concerned, even though in normal course the salary for the entire period should be paid by respondent No.4, keeping in view the peculiar facts and circumstances of the case, I feel interest of justice would be served by directing a lumpsum payment of Rs.1,00,000/-. Such amount is required to be paid by respondent No.4. Other retirement benefits such as gratuity, pension, etc., are to be finalised and to be paid by the respondents 1 to 3. These directions should be carried out within a period of four months from the date of receipt of the order. All the financial benefits are to be given to the petitioners 1 to 3 in equal proportion.

27. It is of course true that in the writ petition, specific prayer is to quash the orders passed by the respondents 1 and 2 and to give direction to them and no specific prayer has been made as such against respondent No.4, even though substratum of the allegation is against respondent No.4. However, since all the relevant averments have been made and respondent NO.4 had been given full opportunity, it would be unjust to deny the relief to the petitioners merely because in the prayer portion specific prayer has not been made against respondent No.4. The duty of the Court to do substantial justice and to mould the relief appropriately cannot be lost sight of in the haze of technicalities.

28. The writ petition is accordingly allowed to the extent indicated in para 26 above with costs of Rs.10,000/-, out of which Rs.5000/is to be paid by respondent No.4 and balance of Rs. 5,000/- is to be paid by respondents 1 to 3.

Index : Yes
Internet: Yes

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To

1. The Director of Elementary Education,
College Road, Chennai 6.

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Officer, Chinna Salem,
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